IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1291 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MANGALBHAI BHIKHABHAI PRAJAPATI & ORS. - Appellant(s)
Versus
D.S.THAKKAR, PARTNER,
AHMEDABAD CEMENT CENTRE & ANR. - Respondent(s)

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Appearance :
Shri Mukesh N. Vaidya for Shri D.V. Parikh for Appellant(s) : 1 - 4.
Shri Rajni H. Mehta for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/09/2007

ORAL JUDGMENT

The appellants-claimants, being partly aggrieved by the award dated 29th February, 1988 passed by the learned Motor Accident

Claims Tribunal (Main), Narol, in M.A.C.P. No. 183 of 1983, are before this Court with a submission that they were entitled to some more amount in comparison to what has been awarded by the learned Tribunal below, therefore, this Court should interfere in the matter and enhance the amount.

2. As no cross appeal or cross objections has/have been filed by the other side, this Court is not required to enter into the question of rashness, negligence and liability of the respondents to pay the amount.

3. On the last date, Shri D. V. Parikh, learned Counsel for the appellants, appeared and submitted before the Court that the learned Tribunal below was unjustified in holding that the yearly income could be assessed at Rs.22,000/- only. He submitted that from the accounts books and future prospects of the deceased, it would clearly appear that he was minting money and was earning a good fortune. After taking me through the evidence, he submitted that the income from the transport business could not be less than Rs.3 Lakhs per year, while the income from the bricks business could also be more than Rs.3 Lakhs per year. He submitted that on the basis of such income, the learned Tribunal below should have assessed the dependency.

4. Shri Rajni Mehta, learned Counsel for the respondent-

Insurance Company, however, submitted that from the income tax returns filed by the deceased with the department, it would appear that his income never crossed Rs.13,000/- in Samvat Years 2035, 2036 and 2037. He also submitted that from the transport business, the deceased could not earn a sum of Rs.3 Lakhs per year. He submitted that the learned Tribunal below was absolutely justified in awarding the amount, as mentioned in the judgement.

5. Though it was sought to be contended by the witnesses that the deceased was earning a good fortune from each of the businesses, but, unfortunately, the income tax returns filed by the deceased would belie their statements. True it is, that people might be managing their affairs in a manner that they are not required to pay extra income tax, but, no tax advisor can ever give an advise to somebody to reduce down his returned income from Rs.6 Lakhs to Rs.13,000/- only. The submission made by the learned Counsel for the appellants that the deceased was earning more than Rs.3 Lakhs in each of the businesses, cannot be accepted. It is, accordingly, rejected.

6. After going through the entire evidence available on the record, I hold that the income from the bricks business could be safely assessed at Rs.15,000/- and income from the transport business could be assessed at Rs.13,000/- per year or Rs.28,000/-. Though this amount

would be something double than the income tax returns of Samvat Year 2037, but, taking into consideration the tax saving plans and other modes, which provide for less payment of tax, I would be justified in holding that the yearly income could be Rs.28,000/-. Out of the said amount, I would reduce an amount of Rs.9,000/- towards the personal expenses of the deceased because he was to run from pillar to post from his transport business to the brick business and so on. I, accordingly, hold the yearly dependency to be Rs.19,000/- . The learned Tribunal below has held that the yearly dependency could be Rs.13,500/-. In view of the findings aforesaid, the claimants would be entitled to an additional amount of Rs.5,500/- per year. Applying the multiplier of 15 (fifteen), as applied by the learned Tribunal below, I hold that the appellants would be entitled an additional amount of Rs.82,500/-. The respondents shall be jointly and severally liable to pay the said amount with 6% interest per annum from the date of the claim petition till realisation.

7. The appeal is, accordingly, allowed to the extent indicated above. No costs.

[R.S.Garg, J.]

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